



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

February 16, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 259 - Business Regulation – Flavored Tobacco Products – Prohibition – Letter of Support

Dear Chair Griffith and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of support for Senate Bill (SB) 259 - Business Regulation – Flavored Tobacco Products – Prohibition. SB 259 is an emergency bill that prohibits businesses licensed to manufacture, sell, buy, and store tobacco products from manufacturing, shipping, importing, or selling any flavored tobacco products. Such tobacco products include cigarettes, electronic smoking devices (ESDs), and other tobacco products.

In 2018, the U.S. Surgeon General declared youth vaping an epidemic, evidenced by a 78 percent increase in current ESD use among high school-aged youth between 2017 and 2018.¹ Research indicates that youth are more likely to try flavored ESDs and are unaware that nearly all ESDs contain nicotine.^{2,3} As was the case with cigars, when flavors excluding menthol are removed, youth turn to menthol tobacco products.⁴ During the 2018-19 school year, nearly 1 in 5 high school students reported using menthol, mint, or wintergreen flavors in their ESDs.⁵ ESDs are not a U.S. Food and Drug Administration (FDA) approved cessation device, and use may lead to dual use of ESDs and cigarettes with associated health risks.⁶ In 2022, Juul Labs was held liable

¹ <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

² Willett JG, Bennett M, Hair EC, *et al* Recognition, use and perceptions of JUUL among youth and young adults *Tobacco Control* 2019;28:115-116. <https://tobaccocontrol.bmj.com/content/28/1/115.info>.

³ Kristy L. Marynak, Doris G. Gammon, Todd Rogers, Ellen M. Coats, Tushar Singh, and Brian A. King, 2017: [Sales of Nicotine-Containing Electronic Cigarette Products: United States, 2015](https://doi.org/10.2105/AJPH.2017.303660) *Am J Public Health* 107, 702_705, <https://doi.org/10.2105/AJPH.2017.303660>.

⁴ Truth Initiative, “Five important things to Know about the removal of menthol cigarettes and flavored cigars from the market,” 08 April 2022, Accessed on 27 January 2023,

<https://truthinitiative.org/research-resources/traditional-tobacco-products/5-important-things-know-about-removal-menthol#:~:text=A%20study%20found%20that%20many%20youth%20simply%20switched.%2856.4%25%29%20support%20a%20federal%20ban%20on%20menthol%20cigarettes.>

⁵ 2018-19 Maryland YRBS/YTS Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000-2018. Baltimore: Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, Center for Tobacco Prevention and Control, August 2020.

<https://health.maryland.gov/phpa/ohpetup/Documents/HG%20c2%a713-1004%28d%29%2c%20FY%202020%20Biennial%20Tobacco%20Stu%20dv%2c%20Cigarette%20Restitution%20Fund%20e2%80%93%20Tobacco%20Use%20Prevention%20and%20Cessation%20Program.pdf>

⁶ Dharma N. Bhatta, PhD, MPH; Stanton A. Glantz, PhD Electronic Cigarette Use and Myocardial Infarction Among Adults in the US Population Assessment of Tobacco and Health *J Am Heart Assoc.* 2019;8:e012317. DOI: 10.1161/JAHA.119.012317.

for their aggressive marketing to youth and entered into a settlement with 33 states, paying \$434 million (including \$13 million to Maryland).⁷ Menthol flavoring has been evidenced to intensify nicotine dependence and the urge to smoke, making it harder for smokers using menthol to quit.⁸ The FDA's Tobacco Products Scientific Advisory Committee stated, "Removal of menthol cigarettes from the marketplace would benefit public health in the United States."⁹ Statewide, in 2021, 53.5 percent of everyday adult cigarette smokers usually smoked menthol cigarettes.¹⁰ While ESD unit sales decreased, menthol flavored ESD sales in Maryland increased by 26 percent between 2018 and 2022; this may be due to the FDA's prohibition on the sale of all flavored non-disposable ESDs, and Maryland's ban on the sale of all flavored cartridge-based and disposable ESDs, other than menthol, which both began in early 2020.¹¹ Menthol tobacco products are aggressively marketed and used at disproportionately higher rates by racial/ethnic minorities; persons of lower socio-economic status; and lesbian, gay, bisexual, transgender, and queer (LGBTQ+) populations.^{12,13} In 2022, the FDA proposed a ban on menthol as a characterizing flavor in cigarettes and cigars to prevent youth initiation. However, the final rule determination may take several years before becoming effective and enforced.¹⁴ Over 360 U.S. municipalities have passed varying restrictions on the sale of flavored tobacco products with at least 170 restricting the sale of menthol cigarettes.¹⁵

If you would like to discuss this further, please do not hesitate to contact Megan Peters, Acting Director of Governmental Affairs at megan.peters@maryland.gov or (410) 260-3190.

Sincerely,



Laura Herrera Scott, M.D., M.P.H.
Secretary

⁷ Brian Frosh, Attorney General Frosh, Plus 32 States and Territories, Reach Agreement of Over \$434.5 Million with Juul Labs, 6 December 2022, Maryland Attorney General, Accessed 27 January 2023 <https://www.marylandattorneygeneral.gov/press/2022/120622.pdf>

⁸ Ahijevych, K and BE Garrett, The role of menthol in cigarettes as a reinforcer of smoking behavior. *Nicotine Tob Res*, 2010 12 Suppl 2:p S110-6. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3636955>.

⁹ Tobacco Products Scientific Advisory Committee (TPSAC), FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011, <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>

¹⁰ 2021 Behavioral Risk Factor Surveillance System (BRFSS), (unpublished)

¹¹ Monitoring U.S. E-Cigarette Sales: State Trends: Figure 17. Maryland E-Cigarette Unit Sales by Product Type, 4 week Estimates 1/2018-10/2022, October 2022, CDC Foundation, Accessed on 27 January 2023 <https://www.cdcfoundation.org/State-E-CigaretteSales-DataBrief-2022-Octo30?inline>.

¹² Fallin A et al., Menthol Cigarette Smoking among Lesbian, Gay, Bisexual, and Transgender Adults. *American Journal of Preventive Medicine*. 2015;48(1):93-97 <https://www.ncbi.nlm.nih.gov/pubmed/25245795>.

¹³ Lawrence, D et al. National patterns and correlates of mentholated cigarette use in the United States. *Addiction*. 2010 Dec;105 Suppl 1:13-31. doi: 10.1111/j.1360-0443.2010.03203.x.

¹⁴ FDA Proposes Rules Prohibiting Menthol Cigarettes and Flavored Cigars to Prevent Youth Initiation, Significantly Reduce Tobacco-Related Disease and Death, 28 April 2022, U.S. Food and Drug Administration, Accessed 27 January 2023 <https://www.fda.gov/news-events/press-announcements/fda-proposes-rules-prohibiting-menthol-cigarettes-and-flavored-cigars-prevent-youth-initiation>

¹⁵ Campaign for Tobacco-Free Kids, "STATES AND LOCALITIES THAT HAVE RESTRICTED THE SALE OF FLAVORED TOBACCO PRODUCTS," Accessed on 27 January 2023, <https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>.